SUBSIDIES ENFORCEMENT
ANNUAL REPORT TO THE CONGRESS

Joint Report of the
Office of the United States Trade Representative
and the
U.S. Department of Commerce

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Executive Summary

This past year has been highlighted by global financial crises. The Administration's highest international economic priority has been to restore global economic health and to minimize the adverse effects of foreign economic crises on the U.S. economy. U.S. trade laws and trade agreements provide strong mechanisms to counter injury from any unfair trade or subsidy practice. For this reason, the Administration is committed to the vigorous, fair and expeditious enforcement of these laws and agreements.

The World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) is one of the most important instruments available to discipline worldwide subsidy practices. The Office of the U.S. Trade Representative (USTR) and the Department of Commerce (Commerce) have continued their close collaboration to monitor and strictly enforce the obligations of the Subsidies Agreement. Through the U.S. countervailing duty (CVD) law and the multilateral disciplines established in the Subsidies Agreement, the United States has effective mechanisms for challenging government programs that are in violation of this Agreement.

The roles of USTR and Commerce with respect to subsidy issues are both unique and complementary. USTR coordinates the development and implementation of overall U.S. trade policy with respect to subsidy matters, represents the United States in the WTO, including the WTO Committee on Subsidies and Countervailing Measures (Subsidies Committee), and leads the interagency team on matters of policy. The role of Commerce's Import Administration is to enforce the CVD law and, in accordance with responsibilities assigned by the Congress in the Uruguay Round Agreements Act of 1994 (URAA), to spearhead the subsidies enforcement activities of the United States with respect to the disciplines embodied in the WTO Subsidies Agreement.

Of critical importance throughout 1998 were the concerns voiced by a number of major U.S. industries, including steel, autos, paper, semiconductors and chemicals, that the economic crisis in Asia would lead to a surge of unfairly traded imports. They were also concerned that funds from the International Monetary Fund (IMF) stabilization packages would be used to subsidize producers and exporters in the recipient countries, *i.e.*, Indonesia, Korea and Thailand. In an effort to address these concerns, Commerce's Subsidies Enforcement Office (SEO) established two monitoring programs -- (1) a subsidies monitoring program to ensure that exports to the United States were not unfairly increased through export or production-related subsidy programs and (2) an import monitoring program to alert the Administration to potential import surges and falling prices.

The focus of the subsidies monitoring program is to ensure compliance with the subsidy-related conditions of the IMF stabilization packages and to uncover potential subsidy programs that are actionable under the U.S. CVD law or the WTO Subsidies Agreement. In addition to monitoring activities from Washington, the SEO trained personnel in U.S. posts overseas to

identify potential violations of the subsidy commitments in the IMF stabilization packages that could lead to unfair trade. As new subsidy information is discovered, the posts relay that information to Washington for further analysis and action, if appropriate. With respect to the import monitoring program, the SEO uses monthly Census import statistics to track imports and prices of goods from Asia, Russia, Brazil and other sources that compete with import-sensitive industries in the United States. The initial focus has been on steel, semiconductors, autos, paper and chemicals, products that are vulnerable to import penetration and unfair trading practices. When relevant information is detected in either monitoring program, Commerce works closely with USTR and other interested federal agencies to evaluate whether any U.S. trade law or WTO violations exist and to determine potential responses, including bilateral actions or actions to be taken under U.S. trade laws.

The effective implementation of the Subsidies Agreement continued to receive our priority attention in 1998. On the domestic side, Commerce issued its final regulations to implement the CVD provisions of the Subsidies Agreement and the changes to U.S. law introduced by the URAA. These regulations offer improved clarity and guidance to ensure that the CVD law remains an effective tool against subsidized imports into the U.S. market. On the multilateral side, the submission and review of subsidy notifications at the WTO remained an important feature of our implementation efforts, as did work on guidelines and procedures designed to facilitate the sound use of the provisions concerning non-actionable (green light) subsidies and subsidies giving rise to rebuttable presumptions of serious prejudice (dark amber subsidies). For the first time, in 1998, the United States' general notification of subsidies to the WTO included information about measures provided at the sub-federal level[1], and considerable work has been done by USTR and Commerce to research and document subsidies provided by sub-national government entities within the territories of U.S. trading partners. Also, for the fourth successive year, no notifications of green light subsidies were received by the Subsidies Committee. The absence of any green light subsidy notifications since the entry into force of the Agreement is but one of many factors that will be considered as the United States and the Subsidies Committee review the operation of the green light and dark amber subsidy provisions in order to decide whether to modify and/or extend such provisions, or to permit them to expire at the end of this year, as is provided for in the Agreement. Section 282(c) of the URAA requires the Administration to consult the Congress in the course of the Subsidies Committee's review of this question and, under this provision, U.S. implementation of a decision to extend the application of these provisions would require Congressional approval under existing "fast track" procedures, as already provided for in section 282(c)(4) of the URAA.

In the coming year, the Administration will continue to provide strong, pro-active responses to subsidy barriers confronted by U.S. exporters in the U.S. and third country markets. To accomplish this, the Administration will increase its efforts to respond affirmatively to U.S. interests affected by global financial crises through focused monitoring of imports and subsidy

[1] A copy of the U.S. notification can be found at Commerce's Subsidies Enforcement Library website at "www.ita.doc.gov/import_admin/records/esel".

practices established by foreign governments and by broadly publicizing to the U.S. commercial community and the general public the wealth of subsidy information that is available through the Internet and the Commerce Subsidies Library (at “www.ita.doc.gov/import_admin/records/esel”).

INTRODUCTION

Section 281 of the URAA details the joint and separate responsibilities of USTR and Commerce in enforcing the United States' rights in the WTO under the Subsidies Agreement. Among the joint responsibilities, as set forth in section 281(f)(4), is the submission of an annual report to the Congress describing the subsidy practices of major trading partners of the United States, and the monitoring and enforcement activities of USTR and Commerce throughout the previous year. This report is the fourth annual report issued under this provision.

MONITORING AND ENFORCEMENT ACTIVITIES

The Subsidies Agreement establishes multilateral disciplines on subsidies and provides mechanisms for challenging government programs that violate these disciplines. WTO disciplines are enforceable through binding dispute settlement, which specifies strict timelines for bringing an offending practice into conformity with the pertinent obligation. Remedies for violations of the Subsidies Agreement include the withdrawal or modification of a subsidy program, or the elimination of the program's adverse effects.

Among its various disciplines, the Subsidies Agreement provides remedies for subsidies affecting competition in one's domestic market, in the market of the subsidizing government and in third country markets. These disciplines serve as a meaningful complement to the U.S. CVD law, which authorizes Commerce to impose a duty on imports if Commerce determines the imports are subsidized and the U.S. International Trade Commission (ITC) finds that those imports are causing injury to a U.S. industry. By its nature, the CVD law focuses only on the effects of foreign subsidized competition in the United States. Although the procedures and remedies are different, the Subsidies Agreement provides an alternative tool to address distortive foreign subsidies that affect U.S. businesses in an increasingly "global" market place.

The monitoring and enforcement activities of USTR and Commerce during the preceding year fall into the following five categories: (A) responding to potential unfair trade issues associated with global financial crises; (B) issuing strong new CVD regulations; (C) monitoring subsidy activity and counseling U.S. private sector and relevant government agencies about WTO subsidy disciplines; (D) reviewing the WTO subsidy notifications of our trading partners, as well as participating in other Subsidies Committee activities; and (E) taking action, where appropriate, to enforce U.S. rights and to address real and potential harm to U.S. interests. The above activities in many ways set the stage for what, in 1999, will be a critical year for the operation and direction of multilateral subsidy disciplines. The Subsidies Agreement requires that, before the end of 1999, a decision be taken on whether to extend, with or without modification, the provisions of Articles 6.1, 8 and 9 of the Subsidies Agreement, which establish rebuttable presumptions of serious prejudice in the case of some subsidies while making other subsidies non-actionable under both

national and multilateral trade remedy rules.[2] The outcome of this decision, in turn, will both reflect and shape the views of the United States and other WTO Members as recommendations are prepared on the future scope and course of work in the WTO for consideration by trade ministers at the November 30 -December 3, 1999 Ministerial Conference, which the United States will host. These questions will be discussed in greater detail later in the report.

A. Global Financial Crises

When the financial crisis in Asia began to spread, a number of U.S. industries, including steel, autos, paper, semiconductors and chemicals, expressed concern to the Administration and Congress that foreign governments would resort to the use of subsidies in an attempt to export their way out of the crisis. These industries also expressed concern that, unless carefully monitored, the IMF stabilization programs would allow these countries to resume prior financial practices that unfairly benefit their strategic industries to the detriment of U.S. industries and workers. In an effort to address these concerns, Commerce's Subsidies Enforcement Office established two monitoring programs -- (1) a subsidies monitoring program to ensure that exports to the United States are not unfairly increased through export or production-related subsidy programs and (2) an import monitoring program to alert the Administration to potential import surges and falling prices. Given its broad mandate, the SEO is able to respond quickly to world crises, such as these, as they arise.

1. *Subsidies Monitoring Program*

The SEO responded to the crisis by expanding its subsidies monitoring activities and by working closely with USTR to evaluate industry concerns about possible new subsidies abroad. The focus of the subsidies monitoring program is to ensure compliance with the subsidy-related conditions of the IMF stabilization packages and to uncover potential subsidy practices that may be actionable under U.S. CVD law or the WTO Subsidies Agreement. Concern was expressed by several U.S. industries that unless the IMF stabilization packages were carefully monitored, IMF beneficiaries would continue to use government subsidy programs and their banking sectors as instruments of industrial policy -- practices which, when they occur, result in subsidizing excess capacity in industries that compete directly with products produced in the United States.

There are a number of positive conditions in the stabilization programs for crisis-affected countries that discipline subsidies, including the removal of government-directed financing, export subsidies and special tax exemptions. These conditions address a wide range of practices that may confer unfair subsidies that are actionable under the WTO, including many which have been found to be subsidies in past CVD cases. The SEO has shared information and worked closely with the interagency group charged with reviewing the financial and economic reforms to which recipient countries have committed in the context of their stabilization programs.

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[2] Pursuant to the URAA, the Congress is required to act on any changes to or extension of such provisions by July 1, 2000.

In addition to monitoring activities from Washington, SEO staff trained personnel in U.S. diplomatic posts overseas to identify potential subsidies that could lead to unfair trade. At different times throughout the last year, SEO staff traveled to Asia to coordinate our monitoring efforts with U.S. and Foreign Commercial Service (US&FCS) officers and State Department economic officers and to provide an overview of the Subsidies Agreement, applicable U.S. trade laws and practical information that could be used to monitor government practices and determine whether they may constitute actionable subsidies. Regular reporting mechanisms were established between the posts and the SEO. SEO staff also examined the resources available at the posts and evaluated the available information regarding potential subsidies that had been collected.

Beyond our discussions and research at the embassies, on a daily basis SEO personnel monitor cable traffic, Foreign Broadcast Information Service (FBIS) reports, trade journals and more than 25 news and business sources from these and other countries. Through this process, SEO staff have been able to identify a number of areas where government support may have been or will be provided to spur production or exports. In addition, the Administration has worked closely with concerned U.S. industries to discuss and review documentation and to determine the extent to which the foreign governments have involved themselves in the economic recovery of their industries. As a result of these monitoring activities, the Administration has actively engaged a number of countries to address several of these subsidy concerns.

Korea and Other Crisis-Affected Asian Economies

Many of the subsidy programs SEO staff are closely monitoring are the result of policies of the Korean government. The two practices described below illustrate the type of activities being monitored on a daily basis and those about which the Administration has engaged in a dialogue with the Korean government.

- *Government-Directed Lending*: The problem of government-directed lending, *i.e.*, the practice of certain governments to influence commercial banks to lend to favored industries at preferential rates, has been of particular concern with respect to the Korean steel and semiconductor industries. The Administration has been monitoring carefully the Korean government's lending practices and involvement in the Korean financial sector, and has paid close attention to banking reforms and the recent provision of government restructuring funds for Korean industries. The President and the Secretaries of State, Treasury, Commerce and the United States Trade Representative raised the issue of Korean government-directed lending to strategic industries, such as steel or semiconductors, on numerous occasions with Korean government and industry officials. Further, the elimination of directed lending is a key element of Korea's IMF program. Commerce also is examining potential subsidies from alleged government-directed lending to the steel industry in two ongoing CVD investigations of certain Korean stainless steel products. These cases are currently scheduled to be completed in March and April, 1999.

- *Conglomerate Industrial Realignments*: As part of a massive restructuring of key industries, including semiconductors, the Korean government has pressured Korea's five largest conglomerates (or "chaebols"[3]) into swapping key affiliates. (This scheme is referred to as the "big deals".) For example, under the three-way big deal initially floated by President Kim, Hyundai was asked to take over Samsung's auto affiliate, while handing its petrochemical unit over to LG. In turn, LG would sell off its semiconductor business to Samsung. The two "big deals" currently being worked through involve the swap of Samsung Motors for Daewoo Electronics and the sale of LG's semiconductor unit to Hyundai Electronics. Through this process, the government has encouraged the five conglomerates to cut the total number of subsidiaries and affiliates from 264 to130.

  To ensure that these big deals are carried out, last fall the press reported that the Ministry of Finance and Economy announced plans to offer extensive tax breaks and possibly extend drastic debt relief to conglomerates that participate. There have been growing concerns from U.S. industry, particularly from the semiconductor industry, that the Korean government would provide incentives to the industries involved in the big deals. SEO staff are working closely with our U.S. embassy in Seoul to monitor the restructuring of the conglomerates. If it is determined that the Korean government is providing subsidies to these companies through these restructuring efforts, the Administration will consider all available options to address this situation.

For other crisis-affected Asian countries, SEO personnel are monitoring government practices similar to those mentioned above, including for evidence of actionable subsidies. Other possible subsidy practices that have been found include debt restructuring and/or debt assumption for both viable and non-viable firms, tax incentives for certain groups, low-interest loans, and export financing and export insurance guarantees at potentially preferential and uneconomic terms. The concerns the Administration has regarding these subsidy issues have been, and continue to be, addressed in various fora with foreign government officials and at various levels of government, from the working staff level to the head of state. Through this continuous intervention, the Administration has been able to affect positively whether and/or the manner in which a government may decide to institute an incentive program for its industries.

2. *Import Monitoring Program*

In anticipation of potential trade problems arising out of the global financial crises, early in 1998, the SEO, in conjunction with other units in Commerce, began an extensive import monitoring program that closely tracks imports and prices in key import-sensitive sectors, such as steel, semiconductors, autos, paper, textiles and chemicals. This program was designed to provide

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[3] The five largest conglomerates are Samsung Group, Hyundai Group, Daewoo Group, SK Group and Lucky Goldstar Group (LG).

an early warning system that the Administration could use to formulate a swift response to potential import surges. SEO staff use monthly Census import statistics to track the volume and prices of imports from Asia and other sources in import-sensitive sectors. The initial focus has been on the industrial sectors mentioned above; however, others will be added should the Administration determine that other sectors are becoming vulnerable to import penetration and potential unfair trading practices.

Steel Sector Monitoring

One industry that has been greatly affected by an import surge over the past year is the steel industry. U.S. steel imports surged to record levels in 1998, rising 33 percent in the first eleven months of 1998 over the same period the previous year. Surges have been higher in key products such as hot-rolled sheet and coils, where imports were up 78 percent in the first eleven months of 1998 compared to the same period in 1997. Steel imports from Japan, Russia and Korea account for the largest share of the increase, with Japan accounting for nearly half of the overall increase. In addition to the significant surge of imports, steel prices have decreased sharply.

With respect to steel, the Administration has enhanced its monitoring efforts by expanding product and country coverage and by obtaining preliminary Census data on steel imports 20-25 days prior to the official release date. Recognizing the importance of receiving this data early, SEO staff worked with other agencies to develop guidelines that would allow the release of the preliminary import data, in limited situations, to the public. Such guidelines were recently adopted. For the first time, the public will now have access to the preliminary Census data which provides the most current, reliable information available on steel imports. The first release of this data was to the steel industry at the end of January, 1999, with the release of the December, 1998, preliminary import statistics. In the future, the Secretary of Commerce may request early release of data for other industries that meet the new guidelines, *e.g.*, where the industry is facing a substantial surge in imports, with significant import penetration, and there is a long history of unfair trade in these products in the United States.

The steel import situation has received sustained attention at the highest levels of the Administration, including the President, the Vice President and members of the Cabinet, who have met with industry and union representatives on a number of occasions to discuss industry and labor concerns and potential responses. The White House has held regular, senior level, interagency meetings to craft an appropriate, timely and comprehensive response to alleviate the adverse impact of steel imports, and to avoid further disruption to the U.S. market. The Administration has particularly urged Japan, Russia and Korea to respect established international rules and to trade fairly, including refraining from subsidization and dumping. Specifically, with respect to Japan, the President clearly stated in his State of the Union address that if Japan's exports in 1999 do not revert to their pre-crisis levels, the Administration stands ready to take appropriate action, potentially including an investigation under section 201 of the Trade Act of 1974 and self-initiating dumping cases on Japanese steel imports.

B. New Countervailing Duty Regulations

As noted above, the CVD law remains our primary tool for addressing the problem of subsidized imports into the United States which cause, or threaten to cause, material injury to a U.S. industry. Although the Subsidies Agreement sets forth general rules and procedures for the conduct of CVD proceedings, it provides only broad guidance with respect to the identification and measurement of countervailable subsidies. Over the past several years, Commerce has worked to develop regulations addressing substantive methodological issues, elaborating on those rules contained in the Subsidies Agreement. Final CVD regulations were issued in November 1998. These regulations enhance the United States' ability to combat unfair subsidies and send an important signal to our trading partners that the United States will not tolerate the subsidization of imports that harm our industries and workers.

The Administration's commitment to addressing unfair subsidies is particularly evident in several of the changes that were made from the proposed regulations (issued in February 1997) to the final regulations. These include the following:

- In response to concerns that the transnational subsidies rule, which exempts international development assistance from countervailability, would allow recipient countries to use funds from foreign governments or international institutions to subsidize their industries with complete immunity from the U.S. CVD law, the regulations made clear that foreign governments cannot exempt ordinary subsidy programs by claiming a link to international funds.

- In response to criticism of Commerce's proposed methodology for measuring the benefit from equity infusions, which would have measured the benefit by comparing the price the government paid with a constructed market price for the shares, the regulations have codified Commerce's current practice of treating the entire amount of an equity infusion into an unhealthy company as a grant.

- In response to concerns that the benchmark interest rates used to measure the benefit from subsidized loans to uncreditworthy companies are too low because they do not take sufficient account of the risk associated with lending to such companies, the regulations have changed the way the risk premium is calculated to better reflect this risk.

Commerce is currently conducting eleven CVD investigations and eleven CVD administrative reviews, involving products ranging from various types of steel to live cattle and covering imports from many of our largest trading partners. The new regulations apply to CVD investigations and reviews initiated pursuant to requests filed on or after January 1, 1999.

C. Monitoring Subsidy Practices and Increasing Awareness of WTO Subsidy Disciplines

The strong enforcement of the Subsidies Agreement is a top priority for USTR and Commerce. To this end, for the second year in a row, Commerce has committed additional personnel and resources to the Subsidies Enforcement Office to expand its effectiveness. The focus of the SEO's work is to examine subsidy complaints and concerns raised by U.S. exporters and to monitor foreign subsidy practices to determine whether they are impeding U.S. exports and are inconsistent with the Subsidies Agreement. The two monitoring programs described above that were implemented in response to the global financial crises illustrate some of the work in this area over the past year.

SEO staff have continued to increase awareness of the resources available to the U.S. trading community in combating unfair competition in foreign markets due to subsidization. To provide this assistance in the most effective and efficient manner, SEO personnel have focused on developing and analyzing information about subsidies and integrating other government resources into this process. We also have continued our efforts to make available through the Internet all publicly available subsidy information collected. Each of these activities is described in more detail below.

1. *Enforcement Counseling*

Throughout this past year, USTR and Commerce SEO staff have handled a myriad of inquiries and met with representatives from numerous U.S. industries that were concerned with the subsidization of foreign competitors. As a result of this counseling, we are currently working with U.S. industry on several potential WTO subsidy cases.

The type of information provided to the agencies through these contacts varies greatly. In many instances, the first contact that a U.S. exporter makes with government officials regarding a subsidy problem is by phone or letter. Initially, we provide an overview of the Subsidies Agreement and explain U.S. rights under this Agreement. We then discuss in detail the subsidy problem the exporter confronts and gather as much information as possible about the subsidy practice and how it has affected the exporter's ability to sell in foreign markets. Following this, we determine what further information is needed and the best way to go about collecting it. Typically, the firm or industry in question is itself the best source of information concerning the harm resulting from the subsidization. This information is critical to support a claim of "serious prejudice." While the U.S. exporter is assembling such serious prejudice information, SEO staff begin the process of researching the subsidy practice at issue to determine the legal framework under which the foreign government is offering the assistance and whether other U.S. exporters have been facing similar problems.

In order to develop as much information as possible about the subsidy practice, we draw on the following resources: reviewing information contained in the Commerce Subsidies Library, researching Internet sites, discussing the issue with Commerce offices which routinely collect

information on specific country and industry practices, and contacting Commerce's Advocacy Center[4] to learn whether any U.S. exporters have reported facing similar problems. After this initial research, we then contact the U.S. embassy in the foreign country maintaining the subsidy to discuss our findings and determine whether there is further information that could be provided. Our counterparts in other governments may also be contacted to ascertain whether they have had complaints from their exporters about the same subsidy practice in a third country.

Once sufficient, relevant information has been gathered to permit the matter to be reliably evaluated, USTR and Commerce will confer with an interagency team to determine the most effective way to proceed. In many cases, raising the matter through informal contacts, formal bilateral meetings and/or in Subsidies Committee discussions can promote more speedy and practical solutions than resorting to WTO dispute settlement. These other approaches also may permit us to uncover additional information or to improve our understanding of the practice, which can affect the decision concerning the appropriate next steps to take, including the possibility of pursuing the problem on grounds other than those provided for under WTO subsidy rules. In any event, as can be gleaned from this report's discussion of monitoring and enforcement activities, it is frequently advantageous to pursue resolution of these problems through a combination of informal and formal contacts, including, where warranted, dispute settlement action in the WTO.

2. *Integration of Government Resources*

One of the most important aspects of increasing the effectiveness of the SEO and subsidy enforcement generally is to ensure that government personnel who have daily contact with the U.S. exporting community, both here in the United States and abroad, are aware of the resources and services available regarding subsidy enforcement efforts. Within Commerce, it is the responsibility of the US&FCS to counsel U.S. companies both here and abroad. Therefore, formal briefings are held with US&FCS officers as they rotate through Washington to describe the information and services available through the SEO. In addition to providing the officers with information on SEO activities, several copies of informational sheets are provided to take back to their posts to inform other US&FCS officers and U.S. business visitors to the post about resources available through the SEO. (See Attachment 1.) These briefings also have become a source of information concerning the types of subsidy problems U.S. companies are facing in the host countries of the US&FCS officers.

SEO personnel also have participated in special conferences held for senior commercial officers and training sessions held for foreign service national employees[5] in Washington. These

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[4] The Advocacy Center helps U.S. exporters seek contracts abroad on an equal footing with foreign government-backed competitors.

[5] Foreign service nationals are professional employees of the U.S. embassies and consulates who are natives of the country in which the embassies are located. These employees assist foreign service and US&FCS officers with their stated duties.

meetings offer a unique opportunity to provide information on the resources available through the SEO to a large number of government officials who have daily interaction with U.S. companies.

As part of the strategy to involve U.S. government personnel overseas in subsidy enforcement activities, SEO staff worked with officials at the Department of State to include foreign service economic officers in this effort, pursuant to the statutory mandate to secure the cooperation of other federal agencies as provided for in section 281(g) of the URAA. Collaboration between the Departments in developing and sharing information concerning foreign government subsidy practices and the administration of foreign governments' unfair trade laws[6] is an important aspect of this effort. To this end, USTR and SEO personnel have been training State Department economic officers in identifying and evaluating foreign subsidy practices and in monitoring unfair trade actions involving U.S. companies. State Department economic officers then provide relevant information to Commerce, USTR and the interagency team on a regular basis.

To reinforce the priority the Administration attaches to effective enforcement, SEO staff met with foreign service officers at several U.S. embassies and consulates in 1998. During these meetings, we provided both US&FCS and economic officers with information on WTO subsidies disciplines and the resources available through the SEO. The US&FCS and economic officers each provide a unique perspective to the subsidy enforcement efforts. The US&FCS officers have daily contact with the U.S. exporting community and, therefore, are directly aware of the problems facing the companies. The economic officers are informed about the types of subsidy programs being administered, implemented or contemplated by the host governments. Both types of information are critical for the SEO to be effective. The information gathered has proven to be very useful in determining the most appropriate areas in which to focus our efforts to assist U.S. exporters. SEO staff will be maintaining and extending these contacts and outreach efforts throughout 1999.

Finally, SEO personnel have been working very closely with other offices within Commerce's International Trade Administration (ITA) to ensure that they are fully aware of our subsidy enforcement efforts and that the SEO is familiar with the information on subsidies that these offices routinely collect in the course of their own work. Chief among our growing contacts are the country- and industry-specific desk officers, the Advocacy Center, the Trade Compliance Center[7] and the Compliance Coordinators group. The Compliance Coordinators group is comprised of representatives from all of ITA's units (Market Access and Compliance, Trade Development, Import Administration, and US&FCS) and the Patent and Trademark Office, and

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[6] An important factor in a U.S. company's ability to do business in any given market is the manner by which the foreign government administers its unfair trade laws and, in particular, its CVD and antidumping (AD) laws. Import Administration monitors these foreign AD and CVD actions involving U.S. companies to ensure that the countries are conducting these investigations in accordance with their international obligations.

[7] The Trade Compliance Center monitors compliance with all international commercial agreements to which the United States is a signatory.

serves as the central coordinating point for ITA's market access and agreement compliance activities. The group meets regularly to share information on trade compliance and market access issues that may be common across regions or industrial sectors, and works to resolve them drawing upon the full range of expertise available within ITA.

Our work with the Advocacy Center also provides an example of the collaborative effort. The Advocacy Center assists U.S. exporters seeking government contracts abroad by providing U.S. government advocacy on behalf of the U.S. company when other foreign competitors bidding on the same contract enjoy government support. At times, this foreign government support may be in the form of subsidies. When the Advocacy Center receives a call from a U.S. company concerning possible foreign government subsidization, they contact the SEO and provide all of the relevant information. In addition, the Advocacy Center has connected the SEO to its computer database. This allows us to review information gathered by the Center to determine whether U.S. exporters' access to foreign contracts is being impeded by government practices which may be actionable under subsidy rules.

3. *Monitoring Foreign Subsidy Practices*

Commerce has continued its efforts to develop a comprehensive database of foreign government practices that are potentially actionable under the Subsidies Agreement. As mentioned in last year's report, the SEO has been focusing its efforts on making as much of this information available through the Internet as possible. By making this information available at a single site, U.S. exporters are able to learn quickly about the remedies available to them under the Subsidies Agreement and the information necessary to develop a CVD case or a WTO subsidies complaint. In addition, by integrating all of the subsidy information developed through years of conducting CVD investigations, the information is now available in a format which USTR and Commerce can easily use to check the WTO notifications of other countries and ensure that they are complete and accurate. As discussed later, this notification process is an important aspect of our subsidy enforcement efforts.

The past year has been an important one in the development of the subsidies database. Import Administration's "home page" contains a wealth of information concerning the Subsidies Agreement, including the U.S. domestic legislation and regulations which implement the Agreement. Another important resource available through the home page is the subsidies database which lists, by country, all subsidy programs investigated or reviewed in U.S. CVD cases. By early this year, this database will cover 54 countries and hundreds of subsidy programs. Attachment 2 provides an overview of what a visitor to the subsidies enforcement site at www.ita.doc.gov/import_admin/records/esel will find.

In addition to the information discussed above, the home page also provides (1) all derestricted WTO subsidy notifications, listed by country, and (2) easily accessible links to other useful U.S. and foreign government cites, such as USTR, the U.S. Ex-Im Bank, the IMF, the WTO (which maintains databases of Members' CVD actions as well as their subsidy notifications

to the WTO), the Canadian and Mexican government trade agencies, and NAFTA. The SEO will be working over the coming year to increase the number of government and foreign links provided. In addition, links to Commerce personnel who can provide additional guidance are supplied. The Internet provides an easy and efficient avenue to reach U.S. businesses and furnish them with information previously available only in person in Washington.

Another aspect of our monitoring activity is the tracking of numerous trade journals and the news and business sources of our major trading partners. Daily summaries of subsidy-related articles are compiled for Asia, the Pacific, Europe and the Americas. These summaries allow us to monitor activities in these areas of the world continually and to share timely information on specific subsidy issues with other U.S. government offices or concerned industry representatives. Through this process, the Administration has been able to identify a number of areas where subsidies may have been or will be provided by governments to spur production or exports.

Due to the large volume of information that is currently provided on the Subsidies Enforcement Internet site regarding the subsidy activities of our major trading partners, and in view of the wide accessibility of the Internet, we have opted not to include a chart detailing foreign government subsidy practices in this year's report. Instead, by consolidating this information on the SEO Internet site, our intention is to satisfy Administration and Congressional aims to automate information so that it may be accessible to the widest spectrum of the population as possible.

D. The WTO Subsidies Committee

The Subsidies Agreement disciplines government subsidy practices through a method of categorization based on the "stop/proceed with caution/go" symbolism of the common traffic light. Export subsidies ("subsidies contingent . . . upon export performance") and import substitution subsidies ("subsidies contingent . . . upon the use of domestic over imported goods") are prohibited – or "red light" – practices. Subsidies provided for certain industrial research and development, regional development and environmental compliance purposes are both permitted and non-actionable ("green light") practices, so long as such government assistance is provided according to the strict conditions and criteria stipulated in the Agreement. Finally, all other ("yellow light") subsidies are permitted, but may be challenged through WTO dispute settlement or CVD proceedings. These subsidies become "actionable" when: (i) they are limited to a firm, industry or group thereof within the territory of a WTO Member (so-called "specific" subsidies); and (ii) they cause adverse trade effects.[8] Certain subsidies, moreover, are presumed to cause such effects -- *i.e.*, subsidies granted in certain circumstances to cover operating losses, subsidies for the

[8] "Adverse trade effects" can range from material injury, or the threat thereof, as in CVD proceedings, to the displacement or impeding of sales or significant price undercutting, price suppression or price depression in so-called "serious prejudice" disputes brought to the WTO, to the nullification or impairment of benefits accruing directly or indirectly to another WTO Member under GATT 1994, such as the benefits of tariff or other market access concessions bound under Article II of GATT 1994.

direct forgiveness of debt, or the subsidization of a product in excess of five percent of the product's value. Because they are viewed as straddling the line between prohibited and actionable subsidies, these presumptively harmful subsidies/circumstances are euphemistically referred to as constituting the "dark amber" category.

One way in which the Subsidies Agreement facilitates compliance with these disciplines, and the monitoring of such compliance, is through subsidy notification. In some instances, notification is mandatory, while in others it is an optional feature that can be used to secure a benefit provided by the Agreement -- such as to make use of transition periods in which to come into conformity with Agreement norms or in order to obtain prior recognition that a subsidy is deserving of green light treatment. In keeping with the objectives and directives expressed in the URAA, WTO subsidy notifications also play an important role in the United States' monitoring and enforcement activities to protect U.S. rights and benefits under the Subsidies Agreement.

1. *Review of Notified Subsidies*

Under Article 25.2 of the Agreement, Members are required to report certain information on all measures, practices and activities that meet the definition of a subsidy, as set forth in the Agreement, and that are specific within the territory of each Member. "New and full" notifications are submitted every third year, beginning in 1995, whereas updating notifications (usually containing information solely on changes made to previously notified subsidies) are submitted in the intervening years. Article 26 of the Agreement charges the Committee with reviewing the full notifications at special sessions held every third year, whereas updates are reviewed at regular, semi-annual Committee meetings.

In 1998, the Committee reviewed notifications ranging across the full spectrum of those which have thus far come due, *i.e.*, some notifications remaining from the initial "new and full" set of 1995 notifications; 1996 and 1997 update notifications; and several that have been submitted for the second full notification cycle which began in 1998. In the table which follows, we have listed the 30 WTO Members (counting the European Union (EU) as one) whose notifications were reviewed by the Subsidies Committee in 1998, indicating the annual reporting period to which the reviewed notifications relate (and including, where noted, instances in which only a supplemental notification was reviewed).

WTO SUBSIDY NOTIFICATIONS REVIEWED IN 1998

WTO MEMBER	1995 Full Notification	1996 Update	1997 Update	1998 Full Notification
Australia			X	
Bolivia		X	X	
Burkina Faso	X	X	X	
Canada			X	

Chile			X	
Colombia			X	
Costa Rica		X	X	
Cuba			X	
European Union			X	
Gambia	X	X	X	
Hong Kong, China			X	X
Indonesia		(Supplemental)		
Japan			X	
Korea			X	
Liechtenstein			X	
Macau	X	X	X	
New Zealand			X	
Nigeria		X		
Norway			X	
Paraguay				X
Poland			X	
Senegal	X	X	X	
Singapore			X	
Switzerland		X	X	
Thailand			X	
Tunisia	X	X	X	
Turkey		X	X	
United States		X	X	
Uruguay			X	
Zimbabwe	X	X	X	

In 1998, the Committee devoted less time than in years past to the review of subsidy notifications, in part because the bulk of notifications under review were updates of the 1995 full notification. Some progress was made in improving the compliance of smaller, developing

countries with the Article 25 notification requirement, although a number of WTO Members remain delinquent even with respect to the initial 1995 full notification. The situation remains very much one of a "half-empty, half-full glass," with greater transparency than ever before having been achieved with respect to the number of programs notified and the quality of information supplied, yet with some Members still not having made a single notification and the annual deadline of June 30 being routinely missed by the vast majority of Members. As years pass, without more successful efforts at compliance combined with a more rational, streamlined process for submitting and reviewing information, it will become increasingly confusing to both Members and outside observers to stay abreast of the staggered notifications and reviews that will be simultaneously up for consideration and action.[9] By the time that the Subsidies Committee had finalized its 1998 annual report to the WTO Council for Trade in Goods, in early November, 1998, only 48 updating notifications for 1996 and 34 updating notifications for 1997 had been submitted out of the now total WTO membership of 133. However, virtually all of our major trading partners are current at least through their 1997 update notifications, and we hope that at least some may have delayed the submission of their 1998 new and full notification in order to expand their notifications' scope.

One of the more important developments in reporting last year was the addition to the United States' notification of 210 separate measures provided or maintained by 43 U.S. states. This significant expansion of the scope of the U.S. notification signaled both the continued leadership of the United States on the issue of improved transparency in the WTO, as well as our commitment to pursuing an equivalent level of transparency on the part of other WTO Members with respect to WTO subsidy notifications. To the extent that the Subsidies Agreement's definition of a subsidy includes financial contributions provided by "a government or any public body within the territory of a Member," it has always been clear that subsidies provided by all levels of government within the territory of a Member were covered by the Agreement and susceptible to notification. However, during the Agreement's early years, while the U.S. federal government had undertaken to consult with the states and collect information on sub-federal measures, the United States had declined to include such information in our notifications until it became clearer that similar information would be provided by our trading partners. Notwithstanding that the obligation in question is concerned only with transparency[10], the United

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[9] In the context of the informal process conducted by the WTO General Council to prepare for the 1999 Ministerial and future WTO work program, the United States has encouraged consideration of ways to streamline notification requirements with the dual aim of relieving administrative burdens while improving transparency and compliance with transparency provisions. In the context of general subsidy notifications, the United States and others have suggested the possibility of replacing the current system with a biennial system entailing full notifications every other year, with the intervening years devoted exclusively to a process of review. This could provide a more rational and effective allocation of resources between the collection and reporting of information and the review of and development of questions on others' notifications, while not meaningfully impairing the timeliness of the information being notified. The United States will continue to press others to develop and consider ideas for improving the system of subsidy notification and surveillance, without detracting from the substance of existing obligations.

[10] Article 25.7 of the Agreement stipulates that the "notification of a measure does not prejudge either its legal status under GATT 1994 and this Agreement, the effects under this Agreement, or the nature of the

States was insistent that the issue of reporting sub-national subsidies was not unique to it nor, for that matter, was it necessarily unique to WTO Members having federal systems of government.

The EU was the first to provide information on sub-national subsidies, specifically with respect to the four EU member states that are federally organized (Austria, Belgium, Germany and Spain). Later, other WTO Members, such as Canada and Australia, began to supply certain information about their provincial and state programs in response to questions posed by the United States and others. Consequently, USTR and Commerce worked closely with the officially designated state points of contact and other helpful contacts, such as the National Association of State Development Agencies, in order to prepare and clear the U.S. notification which was submitted this past year. Furthermore, the addition of state programs to the U.S. notification fulfills a recommendation made by the President's Advisory Committee for Trade Policy and Negotiations (ACTPN) in its 1996 report assessing the implementation of WTO Agreements. As regards implementation of the Subsidies Agreement, the ACTPN has always stressed the importance of submitting comprehensive subsidy notifications and subjecting them to careful scrutiny. The ACTPN, moreover, has viewed full U.S. compliance as a prerequisite to our insistence that others comply. Therefore, in submitting this notification, the United States has made clear to our trading partners that it expects a more forthcoming effort on their part, as well. To this end, USTR and SEO staff have collected, from various sources, information on potential sub-national level subsidies provided or maintained within the territories of Germany, Mexico, Belgium, Canada, Brazil, Australia, and the United Kingdom. The United States intends to request an explanation from our trading partners concerning why such subsidies were not included in their respective notifications -- or, as appropriate, to "counter-notify" certain measures -- as is permitted under Article 25.10 of the Subsidies Agreement.

In 1999, the Subsidies Committee will hold a series of special meetings dedicated to the review of the "new and full" notifications submitted in 1998. In order to provide for a more organized and focused review, the Committee agreed last year to procedures intended to ensure that written questions and replies on notifications are exchanged well in advance of the special meetings so that the meetings themselves can emphasize a more informed follow-up and commentary. As in previous years, the United States will continue to exercise a leading role in the examination and discussion of notifications. To prepare for the first round of special meetings which will be held during the first week of May, the United States recently circulated questions to Argentina, Chile, Japan, Korea, Mexico, Panama, Switzerland and Turkey on their 1998 notifications. The United States also will be developing answers to questions received on its own notification over the course of the next two months, in consultations with other federal agencies and, as appropriate, sub-federal officials. The Administration remains committed to the ongoing improvement in, and transparency of, the WTO's system of subsidy notification and review.

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measure itself."

2. *Other Activities of the Committee*

The Subsidies Committee's work in 1998 continued to address a variety of implementation-related concerns, including its ongoing review of Members' CVD laws and actions. One of the more noteworthy developments in 1998 was the Committee's discussion at its April meeting of the aspects of international financial commitments undertaken by certain WTO Members which may have relevance to the Subsidies Agreement. Consistent with similar discussions conducted in OECD bodies and other WTO committees, the United States initiated this discussion based on the view that it would be helpful and appropriate to invite those WTO Members which had negotiated comprehensive economic reform programs with international financial institutions (IFIs) -- *i.e.*, programs that were designed to deal with their destabilizing financial situations -- to inform the Subsidies Committee of the nature and implementation of specific subsidy-related commitments made in the context of these IFI agreements.

Our intention was not to complicate the execution of such structural reforms, but to provide multilateral support for those efforts and to demonstrate the utility of the WTO notification and review mechanisms to ensuring the sound implementation of commitments which may overlap with, or relate to, WTO rules and obligations. While the relevant Members (Thailand, Korea and Indonesia) were concerned that others understood the severe economic and social dislocations which their societies were undergoing, all reiterated their commitment to observing their WTO obligations and to keeping the Committee informed of relevant developments -- consistent with the Agreement's notification and review procedures and the aim of Article 24.1 to "afford Members the opportunity of consulting on any matter relating to the operation of the Agreement or the furtherance of its objectives." The United States intends to make further use of the Committee in this manner, in keeping with the broader U.S. goal of promoting increased cooperation between the WTO and other international organizations to achieve greater coherence in global economic policymaking.

From a more institutional perspective, two additional Committee activities in 1998 were of particular relevance for this report. These were: (1) consideration of the results of the work of the Informal Group of Experts on the calculation of subsidies based on the cost to the subsidizing government, as provided for in Article 6.1(a) and Annex IV of the Agreement with regard to one category of dark amber subsidies; and (2) completing work on procedures for the conduct of binding arbitration under Article 8.5 of the Agreement with respect to notifications of alleged non-actionable subsidies, or the violation in individual cases of the conditions set out in a notified non-actionable subsidy program. As discussed below, both of these issues play a role in the greater question before WTO Members in 1999 as to whether the provisions of Article 6.1 (concerning dark amber subsidies) and Articles 8 and 9 (concerning green light subsidies) should be allowed to lapse at the end of this year, or should be extended for a further period, either as currently drafted or with modifications. As a result, the United States paid close and careful attention to the resolution of these issues as they were taken up by the Committee in 1998.

Recommendations on Certain Calculation Issues Arising Under Annex IV to the Agreement

In the context of WTO challenges, Article 6.1(a) of the Agreement establishes a rebuttable presumption of "serious prejudice" (one of three main kinds of adverse trade effects described in the Agreement) whenever the subsidization of a product exceeds five percent, *ad valorem*. Annex IV to the Agreement indicates that this five percent threshold is to be calculated on the basis of the cost to the government of providing the subsidy[11], and sets forth certain guidelines for performing such calculations. It then indicates that "[a]n understanding among Members should be developed, as necessary, on matters which are not specified in this Annex or which need further clarification."

As reported last year, in keeping with the above mandate, the Committee established an Informal Group of Experts to examine, develop and recommend to the Committee additional rules for calculating the value of subsidies on the basis of the cost to the subsidizing government. The Informal Group issued a report to the Committee in July, 1997, detailing its views and providing 21 separate recommendations on cost-to-government valuation and allocation issues. This report was first considered at the Committee's regular meeting in October, 1997. Following an initial round of questions and remarks from WTO Members, the Group slightly revised its report in March, 1998, and the revised report was again before the Committee for consideration at its April, 1998 meeting.

The Informal Group's report offers recommendations on several cross-cutting calculation issues -- such as when to allocate a subsidy's value over a period of years rather than solely to the year of receipt -- while the remainder of its recommendations relate to the valuation of various types of subsidy instruments, *e.g.*, loans, grants and tax concessions. In Committee discussions, the United States supported the general objective of developing further guidance on calculating the total *ad valorem* subsidization of a product pursuant to Article 6.1(a). This would have the advantage of providing greater certainty both to those evaluating the feasibility of a dispute settlement complaint under this provision and to governments seeking to avoid running afoul of the five percent threshold. However, the United States consistently maintained that such methodological guidance should be consistent with the objective of ensuring that the Article 6.1(a) discipline is applied as strictly as possible.

The overall assessment of the report by the United States was that the recommendations appear consistent with U.S. CVD methodologies adapted to a cost-to-government standard. In addition, they offer a relatively comprehensive, predictable and straightforward package of measurement rules for implementing the five percent serious prejudice standard. In short, these recommendations would have contributed positively to the balance between strictness and certainty

[11] This is in contrast to the "benefit-to-recipient" calculation methodology which the Subsidies Agreement authorizes -- and which Commerce and other countries' investigating authorities use -- for CVD proceedings. The "cost-to-government" approach calculates the value of a subsidy based on what it has cost the government to provide it, versus a subsidy amount calculated based on what the actual commercial benefit to the recipient of the subsidy might be.

of discipline that the United States was seeking. In the end, however, the Committee did not adopt the recommendations due to objections lodged by certain developing countries which questioned: (i) the WTO-compatibility of allocating over multiple years the value of subsidies provided after the entry into force of the WTO; and (ii) the permissibility of adjusting certain values for inflation or interest, except where Annex IV has explicitly provided for adjustments in situations involving inflationary economy countries. The United States did not concur with these objections, and made its position clear in the Committee's deliberations. However, since a decision to adopt these recommendations would have required a consensus among Members, the Committee opted to "take note" of the recommendations without officially endorsing them as an authoritative interpretation of Annex IV. Nevertheless, from a practical standpoint, once the recommendations were issued and placed before the Committee for consideration, they became available for reference by any party or panel involved in a dispute concerning Article 6.1(a).[12]

Procedures for Arbitration under Article 8.5 of the Agreement

Rules governing non-actionable, or green light, subsidies are for the most part found in Article 8 of the Agreement. Article 8.2 spells out the conditions and criteria which must be met to satisfy green light status for industrial research and development subsidies (in sub-paragraph (a)), regional development subsidies (in sub-paragraph (b)) and environmental compliance subsidies (in sub-paragraph (c)). Article 8.3 indicates that subsidy programs for which non-actionable status is desired are to be notified in advance of their implementation, accompanied by information sufficient to show how the relevant conditions and criteria are met, and these notifications are to be followed up with annual updates. Other provisions of Article 8 provide additional details concerning this notification and Committee review process, ending with Article 8.5, which provides for binding arbitration in disputes over the consistency of a notified program with the green light criteria or in individual cases where it is believed that the terms of a notified program have been violated.

Last year, USTR and Commerce reported on the Committee's agreement on a format for submitting update notifications of green light subsidies, to accompany the initial notification format which was adopted by a WTO Preparatory Committee prior to the WTO's entry into force. The update format supports U.S. objectives with respect to green light subsidies, since it contributes to a rigorous yet manageable process for scrutinizing notifications, without prejudicing any of our rights under the Agreement. The format requires substantial project-level information for those projects receiving the largest amounts or greatest proportion of government aid, and it explicitly reaffirms the right of Members to request, and the obligation of Members to provide, information about individual cases of subsidization. It also contains a review clause which specifically authorizes the Committee to consider, after two years of experience in using the format, whether modifications to (or discontinuation of the use of) the format are warranted.

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[12] In fact, these draft recommendations have already been employed by the United States in a WTO dispute to advance our serious prejudice claims with respect to subsidies provided to the Indonesian automobile industry. This dispute is discussed in greater detail in section E of this report.

To complement the procedural disciplines imposed by these notification rules, and to complete the outstanding work on implementation with respect to the green light subsidy provisions, the Committee reached agreement in 1998 on procedures for the conduct of arbitration proceedings involving non-actionable subsidies, pursuant to Article 8.5 of the Agreement. For several years, the United States (supported by some other Members) had objected to a draft set of procedures that had been circulated under the Committee Chairman's authority in May 1995. The United States had several concerns, but the main objections stemmed from the unclear manner in which the procedures would have effectively limited a Member's ability to request arbitration based on what topics had or had not been raised during the course of the Committee's review of a non-actionable subsidy notification. While we understood some Members' desire that the Committee's review process be credible and used to address or clarify concerns about notified subsidies to the maximum extent possible, the United States was unwilling to circumscribe the right to request arbitration on matters which the Agreement clearly permitted. Ultimately, the Committee reached consensus based on a series of U.S. suggestions which addressed the controversial issues differently, and in an introduction to the document which clarifies that the admonitions to consult and use the Committee review procedures seriously do not, in themselves, constitute rules of procedure for arbitration.

From the inception of these discussions, the United States has always taken the position that it is desirable to reach agreement on arbitration procedures, given that no guidance is provided by the Agreement, and the time period allotted by Article 8.5 to complete these proceedings (120 days) is quite abbreviated. To the extent that procedural ambiguities are clarified in advance of an arbitration request, it provides more time for arbitrators to focus on the substantive issues and arguments within the extremely tight time frame. We believe the procedures that were ultimately adopted provide this added clarity without compromising any legal rights under the Agreement to seek binding arbitration over green light subsidy disputes.

Article 31 Review and the "Provisional Application" of the Green Light and Dark Amber Subsidy Provisions

Article 31 of the Agreement, entitled "Provisional Application," states that "[t]he provisions of paragraph 1 of Article 6 and the provisions of Article 8 and Article 9 shall apply for a period of five years, beginning with the date of entry into force of the WTO Agreement. Not later than 180 days before the end of this period, the Committee shall review the operation of those provisions, with a view to determining whether to extend their application, either as presently drafted or in a modified form, for a further period." In other words, Article 31 requires the Subsidies Committee to review the operation of the green light and dark amber subsidy rules beginning no later than July 5, 1999, with the proviso that these provisions will expire at the end of 1999 unless an explicit decision is made to keep them in force, whether as currently written or with modifications.

The Uruguay Round negotiators of the Subsidies Agreement included this special review requirement because they recognized that the green light and dark amber provisions were the most

novel and untested of all of the new Agreement's provisions. Given that WTO Members had no or little prior GATT experience in the use of either explicit legal presumptions of serious prejudice or normative rules for exempting certain subsidies from the potential of CVD or multilateral subsidy remedies, the negotiators sought to provide for the review and potential termination or modification of these rules within a fixed time period in the event that they worked in an unforeseen -- and undesirable -- fashion. Moreover, to ensure that this review requirement would be taken seriously, the Agreement presents the act of reviewing the provisions as a joint (or at least simultaneous) exercise -- insofar as they serve as opposing kinds of disciplines within the Agreement -- and it requires that an affirmative decision be taken in order for them to remain in effect beyond five years.

In crafting the U.S. implementing legislation, the Administration and Congress were similarly cautious with respect to the review and extension of these rules. First, a variety of provisions in the URAA have the general objective of ensuring that the green light provisions do not serve as loopholes or otherwise undermine the increased disciplines over subsidies achieved in the Uruguay Round negotiations. More specifically, in regard to the question of the Article 31 review, section 282 of the URAA imposes a number of jointly agreed requirements on the Executive Branch to make certain that the United States' participation in the review is thorough, careful and reflective of the full spectrum of U.S. interests.

As the Statement of Administrative Action accompanying the URAA explains, "[s]ection 282 . . . provides for an ongoing review of the Subsidies Agreement and establishes general and specific objectives with respect to that review. The general objectives are to ensure that: (1) the provisions of the Subsidies Agreement regarding red light, dark amber and yellow light subsidies are effective; and (2) the provisions . . . regarding green light subsidies do not undermine the benefits derived from the other portions of the Subsidies Agreement." The annual reports to the Congress on the Administration's subsidies monitoring and enforcement efforts are but one element of our ongoing review. Another will be the forthcoming report of the Department of Commerce to the Congress on the overall operation of the Agreement, but with particular focus on the two general objectives cited above, as is required by section 282(d) of the URAA. Pursuant to the statutory requirements, this report will be submitted by June 30, 1999.

Essentially, the URAA provisions concerning the Article 31 review stand for the proposition that the green light and dark amber rules must be judged as enhancing, or at least not detracting from, the overall effectiveness of the Subsidies Agreement in order for the United States to conclude that it is appropriate to extend their application. To accomplish this, the Statement of Administrative Action goes on to explain that "the provisions [of U.S. law] in question expire 66 months after the entry into force of the WTO unless extended by Congress. Before the decision of the Subsidies Committee, USTR is directed to consult with the Senate Finance and House Ways and Means Committees. (The Administration will not limit its consultations to those committees, but will ensure that it consults with all interested committees, as well as the private sector.) Should the Subsidies Committee decide to extend Articles 6.1, 8 and 9 of the Agreement, either as presently drafted or in modified form, the Administration, after further consultations with relevant

committees and the private sector, will submit legislation to implement the agreed extension. A bill to provide for such an extension would be eligible for consideration under "fast track" procedures.[13] If Articles 6.1, 8 and 9 are not extended, section 282(c)(5) . . . directs USTR to submit a report to Congress setting forth the provisions of this bill which should be repealed or modified as a result of the sunset of these Articles."

In light of these extensive consultation requirements, the Administration wishes to take advantage of the opportunity presented by this annual report to update the Congress and the public on what consideration has occurred to date with respect to the possible extension of Articles 6.1, 8 and 9, and to make some preliminary observations about the relationship of the operation of these provisions to the overall effectiveness of the Subsidies Agreement. With respect to the first issue, as to the activities of the Subsidies Committee itself, no significant amount of work has thus far occurred with respect to the Article 31 review. The matter has been on the agenda of the Committee at its two regular meetings in 1998, but mainly to note only for Members' information and consideration that the review and decision will need to be addressed at an appropriate time in 1999. At its April 1998 meeting, the Subsidies Committee authorized its Chairman to initiate informal consultations with Members on both the substance of the review and the procedures that might be followed in conducting the review. At its meeting in October, the Chairman informed the Committee that some informal bilateral consultations had been held, and that additional consultations with other Members were expected, but that it would be premature to express any views on the procedure until his consultations had been completed.

In the meantime, USTR has begun the process of consulting with other agencies and soliciting the views of the private sector. As to interagency discussions, a more focused process of consideration and discussion is now being initiated through the Trade Policy Staff Committee and its Subcommittee on Subsidies. It bears mentioning in this regard that, beyond USTR and Commerce, there are a number of federal agencies with a particular interest in reviewing the use, effectiveness and possible extension of the dark amber and green light provisions. For example, the green light provisions governing industrial research and pre-competitive development activity will be of special interest to a variety of agencies engaged in federal research and development and technology commercialization activities, such as the Department of Energy, the National Aeronautics and Space Administration, the Department of Health and Human Services, the Department of Transportation, the Department of Defense and others. In addition, the Department of Agriculture will pay close attention to the impact which the extension or termination of both the green light and dark amber provisions could have on the objectives and negotiating positions developed for the next stage of WTO negotiations to achieve greater liberalization of international agricultural trade, as is mandated by the WTO Agreement on Agriculture.

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[13] The URAA already authorizes the use of "fast track" procedures to approve any such extension, so this is unrelated to the issue of any new trade agreement "fast track" authority to which the Congress and Administration might agree.

In terms of the private sector's views, the first formal step occurred with the April 1998 report of the ACTPN on WTO Implementation and its chapter reviewing the Subsidies Agreement. Since then, in the context of soliciting the public's views with respect to the preparations undertaken for the 1999 WTO Ministerial Conference and the WTO's forward work program, USTR issued a Federal Register notice in August of last year which included a specific request for public comment on the question of the Article 31 review. In the ACTPN's April report, it was noted that "there has not been a single notification of a non-actionable ('green light') subsidy. Concerns over abuse of the 'green light' provision have therefore not materialized, perhaps due to perceptions that the provision will be strictly interpreted in the WTO Subsidies Committee. . . . There is also a significant lack of experience with the 'dark amber' . . . subsidies." The ACTPN report observes that "[t]he lack of any experience with these provisions poses a dilemma with respect to their sunsetting in 1999. It had been anticipated that a decision on this issue would be made on the basis of empirical experience with the provisions' operation." The report concludes that "the U.S. Government should seek temporary extension of the 'green light' and 'dark amber' provisions to allow for more experience and appropriate analysis and resolution."

The submissions received in response to USTR's Federal Register notice for the most part reflected an uncertainty about the value of the dark amber provisions and continued wariness of the green light rules. A number of the submissions did not address the question of the Article 31 review. However, of those that did, many commentators appeared to consider the real or potential costs to subsidies discipline represented by the green light rules as overshadowing the real or potential additions to discipline afforded by the dark amber provisions.

Obviously, much more consultation with all interested parties will be needed before a definitive U.S. view can be formulated. With this report, we hope to initiate a more focused dialogue with the interested committees and members of the Congress and, as we said above, to offer some initial comments about the impact and operation of these provisions to date. To begin with, it bears repeating that, with respect to the green light provisions, there have been no notifications of alleged green light subsidies made to the Committee since the entry into force of the Agreement.[14] There are a number of possible explanations for this. First, Article 8.3 states that such notifications are to be made "in the advance of" implementing a subsidy program which meets the relevant green light criteria. This would seem to deny the opportunity of notifying pre-existing subsidies, and there may be enough ambiguity about what would constitute a "new" program to act as a disincentive against the simple re-enactment and notification of existing subsidy programs which Members may believe are of a non-actionable character. Second, footnote 35 to Article 10 of the Agreement makes clear that a Member need not notify a subsidy to the Committee under the green light provisions in order to mount a "green light defense" of that

[14] While some WTO Members have contended that certain subsidies that they have included in their general WTO subsidy notifications meet the green light criteria, they have not included the necessary information to demonstrate this and did not submit the notification pursuant to the relevant green light provisions of Article 8.3 of the Agreement. Consequently, the United States and other Members have made clear that these assertions of green light status carry no weight under the green light notification and review provisions spelled out in Article 8.

program if it is investigated in a CVD proceeding or challenged in WTO dispute settlement. Therefore, some WTO Members may have concluded that it is preferable to take one's chances and argue a green light case only if a program is challenged than to go through the intrusive and burdensome process of notifying the program to the Subsidies Committee in order to earn the green light "label". This brings us to a third likely reason for the absence of green light notifications, *i.e.*, the requirements of the Agreement and the notification procedures agreed upon by the Subsidies Committee. As described in this and past reports to the Congress, the United States has taken a leading role to ensure that the notification and review procedures associated with submitting a green light notification are rigorous and exacting. The conditions and criteria of green light status set forth in the Agreement are numerous and detailed. When transposing these requirements to the kind and magnitude of information that is "sufficiently precise to enable other Members to evaluate the consistency of the programme with the [relevant] conditions and criteria," as Article 8.3 requires of green light notifications, it may be that many Members have concluded that attempting a notification is more trouble than it is worth.

However, insofar as footnote 35 of the Agreement does permit Members to argue green light status in the context of WTO disputes and CVD proceedings without having first notified the alleged green light program, what has been experience thus far with this alternative? To date, no Member has attempted to defend a subsidy practice in WTO dispute settlement based on a rationale that it meets the green light criteria.

In terms of U.S. CVD proceedings, application of the green light provisions of the Subsidies Agreement has been guided by the Congressional mandate to construe such provisions narrowly so as to prevent their misuse. To this end, Commerce has established rules specifying the timelines and procedures for claiming green light treatment in the context of a CVD case. Commerce has made clear that in order to establish a program's noncountervailability, foreign respondents must make a claim and present evidence supporting such a claim within a reasonable time period for the claim to be properly investigated and analyzed. Moreover, when a proper claim is received, the program is carefully examined to determine whether the exacting standards of the green light provisions have all been met. Since enactment of the URAA, Commerce has completed nine investigations and multiple reviews of fifteen CVD orders. Of the more than 380 programs investigated in those proceedings, Commerce received four requests for regional green light treatment and one request for environmental green light treatment. Commerce did not consider three of those requests either because the requests were not timely filed or because the benefits provided by the program were too small to have any effect on the rate of subsidization. The remaining two claims, both regional, were carefully considered and were rejected because the

programs under consideration failed to meet sufficiently the strict requirements of the Agreement.[15]

With respect to the dark amber category, as the ACTPN report indicates, there has also been little experience to date. This may be attributable to a greater degree of uncertainty as to how the provisions, in practice, would operate in comparison with a "standard" serious prejudice subsidy complaint. While the report and recommendations of the Informal Group of Experts were intended to – and may well – provide some additional certainty with respect to the provisions involving the five percent subsidization ceiling, it remains difficult to gauge with any confidence how effectively these provisions serve to enhance the Agreement's subsidies disciplines. One way they *may* have served to increase disciplines is through their deterrence effect, *i.e.*, in the degree to which they may have dissuaded governments from providing subsidies of the kind that are presumptively considered to cause serious prejudice. There is some anecdotal evidence to suggest that this may have been the case, but nothing which could objectively or empirically measure the impact.

Another factor to bear in mind concerning the infrequent use of the dark amber provisions is that they establish a *rebuttable* presumption of serious prejudice. In other words, while the presentation of convincing evidence showing a dark amber subsidy in a dispute would place the burden on the defendant, subsidizing government to show that serious prejudice had not resulted, this does not relieve a prudent complainant of the need to develop a serious prejudice case in order to effectively refute the defendant's arguments. As a result, whereas the dark amber rules provide a complainant with something of a litigation advantage, they still would not reasonably empower a complainant to prevail in a dispute on the basis of assertions alone. In this respect, the dark amber rules may frequently serve as an adjunct to pursuing a "normal" serious prejudice complaint, and in many instances Members may refrain from initiating dark amber cases unless they can also affirmatively demonstrate serious prejudice.

At this juncture, there is one remaining observation to offer with respect to the dark amber provisions. As indicated in Article 27 of the Agreement, the dark amber category permits certain serious prejudice complaints to be brought against developing countries that were not permitted under the rules of the GATT and the predecessor to the Subsidies Agreement, the Tokyo Round Subsidies Code -- complaints which also may not be permitted should Article 6.1 expire.[16] That is,

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[15] However, notwithstanding the U.S. record thus far on these matters, it should be noted that whereas the United States rejected an Italian claim for regional green light treatment for certain subsidies provided to the Mezzogiorno region in the investigation of Pasta from Italy, the investigating authorities of Canada and New Zealand accorded these same subsidies green light treatment in CVD investigations undertaken by them at approximately the same time as Commerce's proceeding.

[16] In addition to Article 27's dark amber provisions, Article 27.7 provides that, until the prohibition of export subsidies for developing countries is fully implemented, developing country Members' export subsidies can be challenged in WTO dispute settlement, if they cause serious prejudice to the interests of another WTO Member.

those subsidy practices identified in Article 6.1 that are provided or maintained by a developing country WTO Member may be challenged in WTO dispute settlement on serious prejudice grounds, albeit without the benefit of a rebuttable presumption. For all other developing country actionable subsidies, the only basis for a WTO subsidy complaint would be if the complainant can show nullification or impairment of tariff concessions or other GATT obligations with regard to imports into the subsidizing developing country Member's market, or unless material injury to a domestic industry in the market of an importing country occurs. As is mentioned elsewhere in this report, the disputes brought by the EU, the United States and Japan against various measures affecting the Indonesian automobile industry involved Article 6.1 allegations, and the panel in that case ultimately found that -- the product in question having been subsidized in an amount exceeding five percent *ad valorem* -- it was permissible to challenge the subsidies on serious prejudice grounds. The EU ultimately prevailed in its case on that basis.

The discussion above illustrates only some of the information and observations that will need to be carefully evaluated as the U.S. position with respect to the Article 31 review is finalized. The Administration looks forward to an intensive and constructive process of consultation with the Congress and the private sector in the coming months as this assessment moves forward.

E. U.S. Enforcement Activities[17]

The United States pursues enforcement of U.S. rights under the Subsidies Agreement through WTO dispute settlement proceedings, bilateral contacts and other actions. Although any decision to initiate a dispute settlement proceeding must carefully take account of the balance of U.S. interests, the general policy objectives of both the Administration and the Congress are to discourage distortive subsidization and to remedy harm caused to U.S. producers or workers by such subsidies. These objectives are expressed clearly in the URAA, and they provide the context in which potential subsidy enforcement complaints have been, and will continue to be, considered. USTR, with the assistance of experts from Commerce, Agriculture and other agencies, has been actively pursuing a number of WTO disputes. The following summarizes the principal disputes which have been pursued to date by the United States.

[17] It should be noted here that, for the first time in years, the United States is also a defendant in a WTO dispute involving multilateral subsidies disciplines. In November 1997, the EU requested consultations concerning the Foreign Sales Corporation (FSC) provisions of the U.S. Internal Revenue Code, and has since claimed that these provisions constitute a prohibited subsidy in violation of the Subsidies and Agriculture Agreements. A panel was established in September 1998, and the first round of briefs have been exchanged. Because the FSC provisions expressly conform both to Subsidies Agreement rules and past GATT decisions concerning how tax treatment of foreign source income is to be reconciled with multilateral trade rules, the FSC is fully consistent with U.S. international obligations and the Administration is vigorously defending it on that basis.

Australia—Prohibited export subsidies on leather

On October 7, 1996, following receipt of a petition filed under Section 301 of the Trade Act of 1974 by the U.S. leather industry, the United States requested consultations with Australia concerning subsidies available to leather producers under Australia's Textile, Clothing and Footwear Import Credit Scheme (TCF scheme) and other subsidies granted or maintained, which are prohibited under Article 3 of the Subsidies Agreement (WT/DS57). Generally, the TCF scheme provides credits to eligible companies to obtain import duty reductions that are determined, in part, on the basis of the value of export sales and the extent of Australian value added in the exported product(s). After consultations were held on October 31, 1996, the parties reached a settlement announced on November 25, which included an agreement by Australia to excise automotive leather from eligibility under the TCF scheme (and another export subsidy program) by April 1, 1997.

However, Australia soon thereafter announced a new package of subsidies granted to the sole Australian exporter of automotive leather. On November 10, 1997, the United States requested WTO consultations on the new measures, alleging that they constituted *de facto* export subsidies. Consultations were held on December 16. On January 9, 1998, the United States requested that the WTO Dispute Settlement Body (DSB) establish a panel to hear this dispute, which it did on January 22. Informal settlement negotiations ensued, so panelists were not immediately selected. On May 4, the United States requested renewed consultations with Australia concerning the new package of subsidies because negotiations had failed to resolve the matter (WT/DS126). These consultations were held on June 4. On June 11, the United States again requested the establishment of a panel under the expedited procedures provided for in Article 4 of the Subsidies Agreement, to replace the panel previously established on January 22. A panel was established on June 22, 1998, and the panel was composed on November 2. The first panel meeting was held on December 9-10, and the second panel meeting was held on January 13-14, 1999.

Canada—Export subsidies and tariff-rate quotas on dairy products

On October 1, 1997, the United States announced as part of its “Super 301" designations that it would begin trade enforcement actions against Canada on the belief that Canada was disregarding its WTO export subsidy and market access commitments made under the Agreement on Agriculture with respect to dairy products. The U.S. dairy industry (National Milk Producers Federation, U.S. Dairy Export Council and International Dairy Foods Association) petitioned USTR to initiate an investigation under Section 301 on the grounds that Canada’s practices were inconsistent with its WTO obligations and adversely affected U.S. exports.

Canada continues to provide subsidies to exports of dairy products without regard to its Uruguay Round reduction commitment on the quantity of subsidized exports. In addition, Canada maintains a tariff-rate quota on fluid milk under which it only permits the entry of milk in retail-sized containers by Canadian residents for their personal use. Canada claims that cross-border

purchases of milk imported by Canadian consumers fulfill the tariff-rate quota. The United States believes that these measures are inconsistent with Canada's obligations under Article II of the GATT 1994, the Agreement on Import Licensing, and Articles 3, 8, 9 and 10 of the Agreement on Agriculture. The United States therefore requested WTO dispute settlement consultations on October 8, 1997 (WT/DS103). Consultations took place on November 19. On December 29, New Zealand also requested consultations with Canada on the same matter (except that New Zealand's request did not include the tariff-rate quota issue). On January 28, 1998, the United States participated in the consultations between New Zealand and Canada. On March 25, the DSB established a panel to consider the U.S. and New Zealand complaints, to which Australia and Japan reserved the right to express views as interested third parties. The first panel hearing took place on October 19-20. The second panel hearing took place on November 17-18. The panel is scheduled to issue its final report to all WTO Members on April 9, 1999.

Indonesia: Subsidies to the Automotive Sector

On October 8, 1996, USTR self-initiated a Section 301 investigation of a trade and investment regime which Indonesia instituted for its automotive sector. On the same day, we requested WTO dispute settlement consultations with Indonesia based on alleged violations of various WTO agreements, including the Subsidies Agreement.

Since 1993, Indonesia granted tax and tariff benefits to producers of automobiles and automotive parts based on the percentage of local content of the finished automobile or part. In 1996, the Indonesian government established the "National Car Program," which granted "pioneer" companies luxury tax- and tariff-free treatment if they met gradually increasing local content requirements. Pioneer companies had to be Indonesian-owned, produce the automobile in Indonesia, and use a unique, Indonesian-owned trademark on the automobile. Pioneer companies also could be granted the right, over a one-year period, to import finished automobiles and still receive the exemption from the luxury tax and tariffs on the imported automobiles; in this case, the foreign company manufacturing the "national car" outside of Indonesia had to enter a counter trade arrangement. One company, PT Timor Putra Nasional, was granted pioneer status and was given the right to import up to 45,000 finished cars in a one-year period from its Korean partner, Kia Motors Corporation. The United States contended that, among other things, the tax and tariff benefits constituted subsidies that caused serious prejudice to U.S. trade interests. The United States also alleged that a $690 million government-directed loan to PT Timor constituted a subsidy that caused, or threatened, serious prejudice.

The United States consulted with Indonesia under the auspices of the WTO on November 4 and December 4, 1996. On June 12, 1997, a panel was established to examine similar complaints brought by Japan and the EU. In addition, pursuant to a request by the EU, an information-gathering process regarding subsidies and serious prejudice was initiated under Annex V to the Subsidies Agreement. On July 29, in response to a request by Japan and the EU, the WTO Director General composed the panel in the EU/Japan v. Indonesia dispute, and on

July 30, the DSB approved a panel request by the United States and consolidated these disputes into one panel proceeding. A separate information-gathering process under Annex V was initiated at the request of the United States. The EU and U.S. Annex V processes were completed in August and September 1997, respectively.

The panel report was circulated to all WTO Members on July 2, 1998. The panel found that the measures in question violated Articles I and III:2 of GATT 1994, Article 2 of the TRIMs Agreement, and Article 5(c) of the Subsidies Agreement.

With respect to U.S. claims under the Subsidies Agreement, the loan to PT Timor was not provided until after the panel had been established. Therefore, as a threshold matter, the panel dismissed the claims concerning the loan on the grounds that these claims were not included in the U.S. request for establishment of a panel, and, thus, were not within the panel's terms of reference under WTO rules.

With respect to the U.S. claims that the other measures caused serious prejudice to U.S. interests, the panel ruled against the United States, essentially because there were no exports of U.S.-origin passenger cars to Indonesia. In the case of General Motors and Ford, the panel found (and the United States did not dispute) that the passenger cars in question were sourced (or were to be sourced) from facilities in Europe. As a result, the panel found that, under the Subsidies Agreement, the United States essentially lacked "standing" to complain about the effect of Indonesian subsidies on exports from Europe to Indonesia. In the case of Chrysler, which did plan on sourcing its passenger car exports to Indonesia from the United States, the panel appeared to agree with the U.S. position that actual exports did not have to be shown to demonstrate serious prejudice. However, as a factual matter, the panel found that the United States had not provided sufficient evidence to demonstrate that Chrysler's intent to export passenger cars to Indonesia had gone beyond the tentative planning stage.

On the other hand, the panel did find that the Indonesian subsidies had caused serious prejudice to the interests of the EU. Thus, the panel did find that those subsidies had an adverse impact on exports of passenger cars by General Motors and Ford. Moreover, in sustaining the EU's claim, the panel accepted many of the arguments put forward by the United States regarding the manner in which the Subsidies Agreement should be interpreted and applied.

Finally, the panel did not accept a subsidiary claim by the United States under Article 28 of the Subsidies Agreement. Article 28 is a transition provision which gave WTO Members three years in which to bring subsidy programs that were inconsistent with the Subsidies Agreement into conformity with its provisions. During that three-year period, Members were not to extend the scope of any such programs. The United States argued that Indonesia had extended the scope of the 1993 program in various ways. While the panel found that the subsidies in question were prohibited subsidies within the meaning of Article 3.1(b) of the Subsidies Agreement, it also found that under Article 27.3, Indonesia, as a developing country, was not subject to the prohibition until

the year 2000. Therefore, it found that the subsidies were not "inconsistent with" the Subsidies Agreement, and, thus, were not subject to the Article 28 ban against the extension of their scope.

Although the panel did not sustain the U.S. claims under the Subsidies Agreement, its findings with respect to the U.S. claims under the GATT and the TRIMs Agreement and the EU serious prejudice claim adequately addressed the commercial problem. Therefore, the United States did not appeal the panel's findings, nor did any of the other parties. On July 23, 1998, the DSB adopted the report.

Thereafter, the parties could not agree on the period of time in which Indonesia should implement the DSB's recommendations and rulings, and on October 8, the EU requested binding arbitration to determine the "reasonable period of time" for implementation. Although the United States had hoped to resolve this issue through further negotiations, in the arbitration proceeding it took the position that Indonesia had not justified its request of 15 months for implementation. On December 7, the arbitrator issued his findings. He agreed with the United States that Indonesia did not require 15 months for implementation, but found that, in light of the severe economic crisis in Indonesia, it should have twelve months for implementation. The arbitration decision, therefore, states that Indonesia must comply by July 22, 1999.

Korea: Potential Subsidies to Hanbo Steel

Based on a complaint brought by members of the U.S. pipe and tube industry and certain members of the U.S. steel industry, USTR and Commerce SEO staff have been investigating allegations that the Korean government has heavily subsidized Hanbo Steel, the second largest steel producer in Korea. In its complaint, the U.S. industry argued that Korean government subsidies were creating unfair competition and displacing U.S. exports to Korea and in third country markets. We have been working closely with the industry to gather information about potential subsidies to Hanbo and have directed several rounds of detailed questions to the Korean government concerning any financial and operational support that may have been provided to Hanbo both prior to and following the company's 1997 bankruptcy. The United States also raised concerns and questions over this matter at meetings of the Subsidies Committee. In this context, the United States drew other WTO member countries' attention to the available information and to our concerns about the actions of the Korean authorities with respect to Hanbo.

The Administration has taken considerable steps to address industry and worker concerns about the financing and operation of Hanbo, including identifying the Hanbo issue as a "bilateral priority" in the October 1997 "Super 301" report to Congress. We have pursued an aggressive strategy to obtain for the U.S. steel industry and its workers the most expeditious and commercially meaningful solution. Specifically, the Administration has engaged the Korean government in discussions aimed at ending any market-distorting subsidies to Hanbo and ensuring a market-driven sale of the company. President Clinton and Ambassador Barshefsky raised the steel problem with Korean President Kim during his State visit in June 1998. Secretary Daley and

Under Secretary Aaron also have raised the issue of Hanbo in meetings with top Korean government officials.

On July 1, 1998, Hanbo's hot-rolled plant was closed temporarily. It was Hanbo's hot-rolled sheet, and the pipe and tube made from this sheet, that initiated the concern about Hanbo.

In August 1998, Deputy USTR Fisher and Commerce Under Secretary Aaron exchanged letters with Korea's State Minister for Trade, Han Duck Soo, to confirm the details of the sale, disposition and operation of Hanbo. In this exchange of letters, the Administration received the following assurances:

- Hanbo is to be sold using a reputable international agent, Bankers Trust Company (BTC), through a expeditious and market-driven, rather than government-driven, bidding process. This process will follow international practices and equal opportunity will be provided to all potential purchasers. There will be no restrictions on how and where Hanbo's assets will be used after their sale.

- POSCO, the large, partially state-owned steel company in Korea, has indicated that it will not bid on Hanbo and will not be involved in managing the sale or disposition of Hanbo.

- The Korean government will not direct any financial institution to extend loans to Hanbo and the company will operate as a private concern, without Korean government direction or support.

BTC later was appointed to manage the sale of Hanbo, and continues in this role. Hanbo was put up for international bid in an auction format. Recent press reports indicate that two firms -- one Korean and one foreign -- submitted final bids, which BTC and the company's creditors decided were too low. BTC and the company's creditors therefore decided to pursue direct negotiations with the bidders instead of an auction format in order to maximize the price paid for the property. As the sale of Hanbo progresses, the Administration will continue to monitor this process to ensure that the sale is driven by market disciplines and that market-distorting subsidies are not provided to Hanbo. Finally, by closely monitoring implementation of the conditionality in the IMF stabilization program for Korea, which includes an interdiction on government-directed lending, the Administration is working to ensure that Hanbo operates as a private concern without any Korean government direction or support.

Spain: Subsidies to Specialty Steel

On November 14, 1996, eleven member companies of the "Specialty Steel Industry of North America" (SSINA) requested that the United States seek WTO dispute settlement consultations with the EU with respect to a provision of Spanish tax law which permits deductions from corporate income tax for 25 percent of the value of foreign investments that are "directly

related to exporting goods and services." The companies allege that the Spanish specialty steel producer, Acerinox, has benefitted from these tax concessions in exporting semi-finished stainless steel feedstock to its subsidiaries in the United States and elsewhere.

Prior to receiving the industry's request, the United States had posed questions about this program during the course of the Subsidies Committee's review of the EU's 1995 subsidies notification, and expressed concerns to EU officials informally and during Committee discussions about the compatibility of this measure with the Agreement's prohibition of export subsidies. After receiving the industry's request, USTR first conferred with counsel to SSINA to obtain further information and clarification about the industry's concerns and then reiterated U.S. concerns to the EU Commission, providing it with an additional set of questions on March 11, 1997. Following additional exchanges with both the EU and the domestic industry, on July 30, the competition authorities of the EU Commission announced the initiation of a formal investigation to determine the compatibility of the tax provisions with the EU's state aids rules in force for coal and steel products. In a communication published on October 31, 1997, in the Official Journal of the European Communities, the competition authorities issued a preliminary finding that the tax scheme appears to qualify as state aid and to be contrary to the relevant state aids rules.

In December 1998, USTR formally reiterated to the EU Commission its concerns about and interest in the EU's progress in resolving this problem, especially insofar as the Commission's investigation has now been outstanding for nearly two years. Although the Commission has not yet formally responded in detail to our request for information, several high-level contacts with EU officials directly responsible for the investigation indicate that the delay was caused largely by the Commission's decision to expand the investigation to include similar measures maintained by other EU member states. We understand that the competition authorities plan to present to the full Commission in the near future a proposal to address all of these measures. The Administration will monitor developments in this case closely and reserve U.S. rights to pursue matters in the WTO should the outcome be unsatisfactory or if the matter remains outstanding for an undue period of time.

ATTACHMENT 1

SUBSIDIES ENFORCEMENT:
ASSISTING U.S. EXPORTERS TO COMPETE EFFECTIVELY

Subsidies Enforcement Office: The Department of Commerce's Import Administration is responsible for coordinating multilateral subsidies enforcement efforts. The primary mission is to assist the private sector by monitoring foreign subsidies and identifying subsidies that can be remedied under the Subsidies Agreement of the World Trade Organization, of which the United States is a member. To fulfill this mission, Import Administration has created the Subsidies Enforcement Office (SEO). As part of its monitoring efforts, the SEO has created a Subsidies Library, which is available to the public via the Internet (www.ita.doc.gov/import_admin/records/). The goal is to create an easily accessible one-stop shop that provides user-friendly information on foreign government subsidy practices.

Types of Subsidies: A subsidy can be almost anything a government does, if the following conditions are met: (1) a financial contribution is made by a government or public body and (2) a benefit is received by the company. Trade rules permit remedies in circumstances when subsidies are "specific" (*i.e.*, provided to a limited number of companies, such as all exporters) and have caused adverse trade effects. Subsidies can take a variety of forms. Following are some of the types of foreign subsidies that could place a U.S. exporter at a competitive disadvantage vis-a-vis a foreign competitor.

- ***Export financing*** at preferential rates.
- ***Grants or Tax exemptions*** for favored companies or industries.
- ***Loans that are conditioned on meeting local content requirements***, or are contingent upon the use of domestic goods over U.S. exports (commonly referred to as "import substitution subsidies").

As an illustration:
A U.S. exporter is bidding on a project in Country A and is competing against an exporter from Country B. The company from Country B offers a bid that is extremely low, possibly even below what one would assume to be the cost of production. The U.S. exporter may have knowledge that the reason the company from Country B is able to bid so low is that it is being assisted by its government with low cost loans and payment of various export related expenses. In such a situation, we would encourage the U.S. exporter to collect as much information as possible concerning the potential subsidies and then contact us with all of the relevant information. We would then check further into the types of subsidies being received and determine whether any action should be taken.

Types of Remedies: Remedies for violations of the Subsidies Agreement could involve requiring the foreign government to eliminate the subsidy program or its adverse effect, or, as a last resort, to authorize offsetting compensation.

Working Together to Assist U.S. Exporters: The SEO welcomes any information about foreign subsidy practices that may adversely affect U.S. companies' export efforts. The SEO can evaluate the subsidy in relation to U.S. and multilateral trade rules to determine what action may be possible to take to counteract such adverse effects. By working together to monitor foreign subsidies and enforce the Subsidies Agreement, we can ensure that U.S. companies are competing in a fair international trading system.

***Questions and information can be referred to*:**
Carole Showers tel.: (202) 482-3217
fax : (202) 501-7952
e-mail: Carole_Showers@ita.doc.gov

ATTACHMENT 2

THE SUBSIDIES ENFORCEMENT LIBRARY

www.ita.doc.gov/import_admin/records/esel

First level choice

Electronic Subsidies Enforcement Library

Table of Contents:

- ***Overview Of The Subsidies Enforcement Office***
- ***Subsidy Programs Investigated By DOC***
- ***WTO Subsidies Notifications***
- ***SEO Annual Report***

Second level choices

- ***Overview of the Subsidies Enforcement Office***

If this topic were selected from the Table of Contents above, the visitor would be taken to the informational page found in Attachment 1 to this report.

- ***Subsidy Programs Investigated By DOC***

If this topic were selected, the visitor would find information on subsidy programs analyzed by Import Administration staff during CVD proceedings from 1980 to the present. Within this topic, the information on subsidy programs is first segregated by country. It is then divided into two sub-categories: programs that are not "in name" specific to a certain industrial sector ("general") and programs that are used only by certain sectors ("industry"). Thus, if a visitor to the site were interested in subsidies that

are available specifically to the steel sector in Brazil, they would chose ***Brazil ➞Industry*** and then examine the information provided. Once a subsidy program of interest is found in this section, one click on that program title will take them directly into the Federal Register notice where a complete description of the program and Commerce's analysis is provided.

The second sub-division of programs within this topic is based on the classification of the subsidy program by Commerce. There are five categorizations: (1) countervailable, (2) non-countervailable, (3) terminated, (4) not used and (5) found not to exist. These categories track the methodology used by Commerce and found in its decisions as published in the Federal Register. Descriptions for each of these terms are provided in the Subsidies Library. This level of detail allows a visitor to the library to find the exact type of information they are seeking. Using the same scenario as described above, if one were interested in finding out which subsidy programs Commerce had countervailed involving steel products exported from Brazil, they would select ***Brazil ➞Industry ➞ Countervailable Programs*** and then review the information provided. If more detailed information about a particular subsidy program is required, a click of the mouse on the program title will take the visitor directly into the Federal Register notice where such information is readily available.

The following chart provides a view of what is located on the Subsidies Enforcement web site. Due to space restrictions here, we have included countries in the chart that would demonstrate the variety of information available.

UNITED STATES DEPARTMENT OF COMMERCE
IMPORT ADMINISTRATION

ELECTRONIC SUBSIDIES ENFORCEMENT LIBRARY

KEY TO SUBSIDY PROGRAM CODE

1 = COUNTERVAILABLE
2 = NON-COUNTERVAILABLE
3 = TERMINATED
4 = NOT USED
5 = FOUND NOT TO EXIST

BRAZIL

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

CANADA

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

GERMANY

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

INDIA

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

ISRAEL

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

ITALY

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

MALAYSIA

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

NETHERLANDS

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

SOUTH AFRICA

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

SWEDEN

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

THAILAND

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

TURKEY

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

UNITED KINGDOM

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

VENEZUELA

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

Second level choices (cont.)

- ***WTO Subsidies Notifications***

A visitor to this site will find all derestricted WTO subsidy notifications, by country. Beneath each country's name is the date the document was submitted to the WTO and the date it was posted to the WTO web site. This listing provides each type of notification, *i.e.*, new and full, update or a supplement to an earlier filing. (*See* discussion above in section D of the report.) Clicking on the name of the country next to the document of interest, will take the visitor directly to that country's subsidy notification. If subsidies have been notified, a listing of those subsidies is provided, in addition to specific information concerning the subsidy program, such as the type of incentive provided and the duration and purpose of the program. Several of the larger countries have provided information on hundreds of subsidy practices. Although the Subsidies Agreement stipulates that the notification of a subsidy practice does not prejudge its legal status under the Agreement, these notifications do provide detailed information concerning a number of countries' subsidy measures.

- ***SEO Annual Report***

A visitor making this selection, will find the most recent Subsidies Enforcement Annual Report to Congress.